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February 26, 2014

BY CERTIFIED MAIL

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RECEIVED

MAR - 3 2014

OFFICE OF THE REGIONAL ADMINISTRATOR

Re: 60-Day Notice of Violations and Intent to File Suit Regarding Noncompliance
with Federal Clean Water Act's Industrial Stormwater Discharge Requirements:
201 Lowland Street, Holliston MA

Dear Sirs:

This office represents Clean Water Action, a national non-profit citizens' organization working for prevention of pollution in the nation's waters, protection of natural resources, creation of environmentally-safe jobs and businesses, and empowerment of people to make democracy work. Clean Water Action has over one million members nationally, more than 50,000 of whom reside in Massachusetts.

New England Emulsions Corp. (“New England Emulsions”) operates an asphalt emulsions manufacturing facility at 201 Lowland Street, Holliston, Massachusetts (the “Facility”). The Facility is failing to comply with the federal Clean Water Act’s requirements for control of stormwater pollution. The Facility has been subject to EPA’s Multi-Sector General Stormwater Permit for Stormwater Discharges Associated with industrial Activity (“Stormwater Permit”) since at the latest February 2009.¹ The company failed to complete and submit quarterly TSS benchmark monitoring reports for 16 of the 19 monitoring quarters since April 2009. The company also failed to complete and submit annual effluent limitation monitoring results for TSS, Oil & Grease and pH during 2010. In addition, New England Emulsions did not prepare and submit any annual report during 2012 or 2013 as required by the Stormwater Permit.

We write to give notice that Clean Water Action intends to file a civil action in the United States District Court for the District of Massachusetts under section 505 of the Federal Clean Water Act against New England Emulsions for noncompliance with the federal Clean Water Act’s stormwater discharge requirements. Stormwater runoff from the Facility is discharged into Bogastow Brook, a tributary of the Charles River.

Activities that take place at industrial facilities, such as material handling and storage, are often exposed to the weather. As runoff from rain or snowmelt comes into contact with these materials, it picks up pollutants and transports them to nearby rivers, lakes, or coastal waters and tributaries thereto, including but not limited to storm sewer systems, wetlands, and other surface waters. Stormwater pollution is a significant source of water quality problems for the nation’s waters.

Clean Water Action will ask the Court to ensure New England Emulsions’ future compliance with the Act, assess civil penalties in an appropriate amount,² award plaintiff its litigation costs, including attorney and expert fees, and award any other relief the Court deems appropriate. Clean Water Action’s complaint will be filed a minimum of 60 days after the postmark date of this letter. This is a formal 60-day notice of intent to sue that is being served pursuant to 40 C.F.R., Part 135.

¹ 73 Fed. Reg. 56572 (Sept. 29, 2008). Notices of Intent to be covered by the Stormwater Permit were filed for the Facility on January 5, 2009 and June 12, 2012.

² The Act authorizes the Court to assess a penalty of up to \$37,500 per day, per violation. *See* 73 Fed. Reg. 75340 (Dec. 11, 2008).

New England Emulsions Corp.

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This notice is being provided by:

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Counsel for Clean Water Action in this case is:

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NEW ENGLAND EMULSIONS'S VIOLATIONS AND DATES OF VIOLATIONS

New England Emulsions' violations are described below and are also set forth on a Table attached as Exhibit A hereto.³ The Complaint, when filed, will set forth additional days of violations that occur between the date of this letter and the date on which the Complaint is filed.

A. VIOLATIONS OF THE TERMS OF THE GENERAL PERMIT

The company has violated the permit's terms, as follows:

1. Failure to Comply with the Permit's Monitoring Requirements

New England Emulsions is required to monitor its discharges in accordance with the specific provisions of section 6 of the General Permit (pgs. 33-40) and Appendix B, section B. This includes monitoring for benchmark parameters and effluent limitations guidelines applicable to asphalt paving and roofing materials manufacturers. General Permit, sections 8.D.3, 8.D.4. New England Emulsions was required to monitor for the presence of TSS in its stormwater discharges for each quarter commencing with the April 1, 2009 to June 30, 2009

³ Clean Water Action believes that violations have occurred on the dates identified in this letter and on Exhibit A, and not just on rain days. However, to the extent it is determined that rain days are relevant in determining the dates of violations, such rain dates through February 23, 2014 are set forth on Exhibit B hereto. The complaint, when filed, will set forth additional rain dates since February 23, 2014.

quarter. Quarterly monitoring is required to continue until four consecutive quarterly samples show that the company's TSS discharges are below EPA benchmark levels. New England Emulsions failed to comply with these monitoring requirements in 16 of the 19 monitoring quarters since April 2009. *See* Exhibit A. The company also failed to conduct effluent limitation monitoring for TSS, pH and Oil & Grease during 2010 as required by the Stormwater Permit. *See id.*

To the extent additional monitoring violations become known to Clean Water Action before the action is filed, the complaint will seek remedy for such additional monitoring violations. To the extent additional monitoring violations are learned through discovery in the action, the complaint will be amended to seek remedy for such additional monitoring violations.⁴

2. Failure to Comply with the Permit's Reporting Requirements.

New England Emulsions is required to report certain information to EPA and the Massachusetts Department of Environmental Protection ("Mass DEP") regarding its stormwater discharges in accordance with the provisions of section 7 of the Permit. Among other things, New England Emulsions must submit quarterly benchmark monitoring data and effluent limit monitoring data to EPA. *See* General Permit, section 7.1.⁵ Benchmark monitoring reports and effluent limit monitoring reports were to have been filed with EPA 30 days following receipt of monitoring results. New England Emulsions failed to comply with this requirement, as set forth on Exhibit A.

New England Emulsions is also required to prepare and submit to EPA annual reports that include findings from its annual comprehensive site inspections and documentation of corrective actions. *See* General Permit, section 7.2. New England Emulsions failed to submit annual reports to EPA in 2012 and 2013, as set forth on Exhibit A.

To the extent additional reporting violations become known to Clean Water Action before the action is filed, the complaint will seek remedy for such additional reporting violations.

⁴ Additional discovered monitoring violations may include, without limitation: failure to ensure representative sampling (General Permit, App. B, section B(1)(A), pg. B-5); failure to monitor from all facility outfalls (*id.*, section 6.1.1, pg. 33); failure to monitor during a measurable storm event following the preceding storm by at least 3 days (*id.*, section 6.1.3, pg. 33); failure to conduct monitoring in accordance with test procedures approved under 40 CFR Part 136 (*id.*, App. B, section B(10), pg. B-6); or failure to sample within the first 30 minutes of a measurable storm event (*id.*, section 6.1.4, pg. 34).

⁵ If the data contains any exceedences of benchmarks, it must also be submitted to Mass DEP. *See* General Permit, Section 9.1.2.4.

To the extent additional reporting violations are learned through discovery in the action, the complaint will be amended to seek remedy for such additional reporting violations.⁶

3. Failure to Ensure That Control Measures Minimize Pollutant Discharges


The General Permit requires New England Emulsions to ensure that its control measures minimize its stormwater pollutant discharges. General Permit, section 2.0 (pg. 12).⁷ The company must modify its control measures as expeditiously as practicable whenever it finds that they “are not achieving their intended effect of minimizing pollutant discharges.” *Id.*, section 2.1. Because the company has not been regularly monitoring its pollutant discharges as required by the permit, it cannot know how its existing control measures are performing and therefore cannot have been modifying them as necessary to minimize stormwater pollutant discharges.

This Notice Letter alleges that New England Emulsions failed to implement adequate control measures based on information presently available to Clean Water Action. If additional information regarding this violation becomes known to Clean Water Action in the future, the complaint may set forth some or all of such additional information.

CONCLUSION

Clean Water Action believes this Notice of Violations and Intent to File Suit sufficiently states the basis for a civil action. During the 60-day notice period, we would be willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of litigation. If you wish to pursue such discussions, please have your attorney contact us within the next 20 days so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing when that period ends.

Sincerely,



Nora J. Chorover
Attorney for
CLEAN WATER ACTION

⁶ Additional discovered reporting violations may include, without limitation, failure to submit all reporting data to EPA no later than 30 days after receipt of laboratory results (General Permit, section 7.1).

⁷ “Minimize” means “reduce and/or eliminate to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice.” *Id.*

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cc: (by certified mail)

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EXHIBIT A

EXHIBIT A
NEW ENGLAND EMULSIONS VIOLATIONS

Type of Violation	Parameter	Relevant Quarter	Beginning Date of Violation	Earliest End Date of Violation
Failure to Monitor Benchmark Limit	TSS	April-June 2009	June 30, 2009	The present
Failure to Monitor Benchmark Limit	TSS	July-September 2009	September 30, 2009	The present
Failure to Monitor Benchmark Limit	TSS	January-March 2010	March 31, 2010	The present
Failure to Monitor Benchmark Limit	TSS	April-June 2010	June 30, 2010	The present
Failure to Monitor Benchmark Limit	TSS	July-September 2010	September 2010	The present
Failure to Monitor Benchmark Limit	TSS	October-December 2010	December 31, 2010	The present
Failure to Monitor Effluent Limitation	TSS	Annual (2010)	December 31, 2010	The present
Failure to Monitor Effluent Limitation	pH	Annual (2010)	December 31, 2010	The present
Failure to Monitor Effluent Limitation	Oil & Grease	Annual (2010)	December 31, 2010	The present
Failure to Monitor Benchmark Limit	TSS	January-March 2011	March 31, 2011	The present
Failure to Monitor Benchmark Limit	TSS	April-June 2011	June 30, 2011	The present
Failure to Monitor Benchmark Limit	TSS	July-September 2011	September 30, 2011	The present
Failure to Monitor Benchmark Limit	TSS	January-March 2012	March 31, 2012	The present
Failure to Monitor Benchmark Limit	TSS	July-September 2012	September 2012	The present
Failure to Monitor Benchmark Limit	TSS	October-December 2012	December 31, 2012	The present
Failure to Monitor Benchmark Limit	TSS	January-March 2013	March 31, 2013	The present
Failure to Monitor Benchmark Limit	TSS	April-June 2013	June 30, 2013	The present
Failure to Monitor Benchmark Limit	TSS	July-September 2013	September 2013	The present
Failure to Monitor Benchmark Limit	TSS	October-December 2013	December 31, 2013	The present
Failure to Report on Benchmark Monitoring	TSS	April-June 2009	July 31, 2009	The present
Failure to Report on Benchmark Monitoring	TSS	July-September 2009	October 31, 2009	The present
Failure to Report on Benchmark Monitoring	TSS	January-March 2010	April 30, 2010	The present
Failure to Report on Benchmark Monitoring	TSS	April-June 2010	July 31, 2010	The present

Type of Violation	Parameter	Relevant Quarter	Beginning Date of Violation	Earliest End Date of Violation
Failure to Report on Benchmark Monitoring	TSS	July-September 2010	October 31, 2010	The present
Failure to Report on Benchmark Monitoring	TSS	October-December 2010	January 31, 2011	The present
Failure to Report on Effluent Limit Monitoring	TSS	Annual (2010)	January 31, 2011	The present
Failure to Monitor Effluent Limitation	pH	Annual (2010)	January 31, 2011	The present
Failure to Monitor Effluent Limitation	Oil & Grease	Annual (2010)	January 31, 2011	The present
Failure to Report on Benchmark Monitoring	TSS	January-March 2011	April 30, 2011	The present
Failure to Report on Benchmark Monitoring	TSS	April-June 2011	July 31, 2011	The present
Failure to Report on Benchmark Monitoring	TSS	July-September 2011	October 31, 2011	The present
Failure to Report on Benchmark Monitoring	TSS	January-March 2012	April 30, 2012	The present
Failure to Report on Benchmark Monitoring	TSS	July-September 2012	October 31, 2012	The present
Failure to Monitor Benchmark Limit	TSS	October-December 2012	January 31, 2013	The present
Failure to Report on Benchmark Monitoring	TSS	January-March 2013	April 30, 2013	The present
Failure to Report on Benchmark Monitoring	TSS	April-June 2013	July 31, 2013	The present
Failure to Report on Benchmark Monitoring	TSS	July-September 2013	October 31, 2013	The present
Failure to Report on Benchmark Monitoring	TSS	October-December 2013	January 31, 2014	The present
Failure to Submit Annual Report		Annual 2012	November 13, 2012	The present
Failure to Submit Annual Report		Annual 2013	November 13, 2013	The present
Failure to Implement Adequate Control Measures	TSS		June 30, 2009	The present

EXHIBIT B

EXHIBIT B

DAYS BETWEEN JUNE 30, 2009 AND FEBRUARY 23, 2014 ON WHICH STORMWATER FROM FACILITY DISCHARGED TO WATERS OF THE UNITED STATES

July 2009:	2, 3, 8, 9, 12, 18, 21, 22, 24, 27, 31
August 2009:	1, 12, 28, 29
September 2009:	12, 13, 28, 29
October 2009:	3, 4, 7, 8, 10, 14, 16, 19, 24, 25, 28, 29
November 2009:	14, 15, 20, 24, 27, 28
December 2009:	1, 3, 6, 9, 10, 14, 20, 27, 28
January 2010:	1, 3, 18, 19, 20, 26
February 2010:	11, 16, 17, 24, 25, 26, 28
March 2010:	1, 14, 15, 16, 23, 24, 26, 29, 30, 31
April 2010:	10, 17, 27
May 2010:	8, 9, 19, 20, 27
June 2010:	1, 2, 7, 10, 11, 13, 23
July 2010:	11, 14, 17, 24, 25
August 2010:	6, 10, 15, 23, 24, 25, 26
September 2010:	4, 14, 17, 27, 29
October 2010:	2, 4, 5, 6, 7, 15
November 2010:	5, 8, 9, 10, 17, 26
December 2010:	2, 13, 23, 27
January 2011:	8, 12, 13, 18, 19, 21, 25, 27
February 2011:	2, 3, 6, 8, 25, 26, 27
March 2011:	1, 7, 11, 17, 22
April 2011:	1, 5, 13, 14, 17, 20, 24
May 2011:	5, 8, 15, 16, 17, 18, 19, 20, 23, 24
June 2011:	2, 10, 11, 12, 13, 18, 23, 24, 26
July 2011:	8, 9, 14, 15, 23, 24, 26
August 2011:	7, 8, 10, 11, 16, 17, 26, 28, 29
September 2011:	6, 7, 8, 9, 24, 28, 29
October 2011:	4, 13, 14, 15, 20, 27, 28, 30
November 2011:	11, 17, 23, 30
December 2011:	7, 8, 22, 23, 28
January 2012:	12, 13, 17, 20, 22, 24, 27, 28
February 2012:	25
March 2012:	1, 2, 3
April 2012:	1, 2, 13, 23, 24
May 2012:	2, 9, 10, 16, 22, 23, 30
June 2012:	2, 3, 5, 8, 13, 14, 23, 26
July 2012:	3, 4, 5, 19, 29

August 2012:	1, 6, 11, 16, 18, 29
September 2012:	5, 6, 9, 16, 19, 29
October 2012:	8, 11, 20, 29, 30, 31
November 2012:	8, 9, 14, 28
December 2012:	8, 10, 17, 18, 19, 22, 27, 28, 30
January 2013:	12, 16, 17, 30, 31
February 2013:	9, 10, 12, 20, 24, 25, 27, 28
March 2013:	7, 8, 9, 13, 19, 20
April 2013:	2, 11, 12, 13, 20
May 2013:	9, 10, 22, 24, 25, 26, 29
June 2013:	3, 4, 5, 6, 7, 8, 11, 12, 14, 18, 19, 28
July 2013:	12, 23, 24, 26, 27, 30
August 2013:	2, 10, 27
September 2013:	1, 2, 3, 13, 22
October 2013:	5, 6, 7, 8
November 2013:	8, 18, 23, 27, 28
December 2013:	2, 7, 10, 15, 18, 24, 30
January 2014:	3, 6, 7, 12, 15, 19, 22
February 2014:	4, 5, 6, 14, 16, 19, 20, 21, 22